

NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISIONAward No. 24651  
Docket No. 44488  
96-1-95-1-I-1363

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union  
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(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim of Conductor J.D. Pisut, Markham Yard, for pay for all time lost while dismissed, November 9, 1993 until December 20, 1993, at which time reinstated on a leniency basis. Dismissal resulting from investigation held on November 4, 1993 concerning alleged "riding on the brake platform of a car that was being shoved within the confines of Markham Yard, on Tuesday, October 14, 1993". Claim also includes that all notation of the investigation and matter be completely expunged from Claimant's Personal Record."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was cited, tried, and found guilty of riding on the brake platform of a car. He was dismissed from service on November 9, 1993, as a result of that incident. The Organization alleges that on November 18, 1993, Local Chairman Roebuck addressed a Letter of Appeal of the dismissal to Superintendent Chisum and hand delivered it to him. On December 17, 1993, the Superintendent addressed a letter to Claimant reinstating him on a leniency basis effective December 20, 1993. Superintendent Chisum did not respond to the Local Chairman's November 18, 1993, Letter of Appeal.

On March 5, 1994 (after a 106-day period), the Local Chairman addressed a letter to the Superintendent citing the expiration of the time limits within which he was required to respond to Claimant's November 18, 1993, appeal of his dismissal. Carrier responded by indicating that there was no record of the November 18 appeal being received in the Superintendent's office and, consequently, declined the claim in its entirety.

At the outset, the issue is did the Superintendent ever receive the November 18, 1993 appeal letter and did Carrier fail to properly respond, if the letter was received by him?

After a review of the record, including a dated stamped copy of the November 18, 1993, appeal letter, this Board can only conclude that the Superintendent was properly served with the appeal, as contended by the Organization, and he did not reply to it. The fact that the Superintendent returned Claimant to work on a leniency basis after he was held out of service for forty-six days does not substitute for a proper reply of the Superintendent to the November 18, 1993, appeal letter.

Article 6, Time Limit on Claims Agreement, Paragraph 4 of the Agreement, is controlling in this dispute. It reads as follows:

"When an appeal time claim is disallowed or modified by the superintendent, such notice of disallowance must be in writing and state in detail the reasons for correction or disallowance within ninety days of receipt of the written appeal; otherwise the claim will be considered valid and settled accordingly...." (emphasis added).

There is no evidence in the record to indicate that Carrier officials met the requirements of this language. Failure to do so leaves no alternative to this Board but to impose its conditions. Consequently, this claim must be sustained on the time limit error and there is no need to reach the merits of the case.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of First Division

Dated at Chicago, Illinois, this 3rd day of October 1996.